

UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Curtius et al.
Application Number: 10/583,636
Filing Date: 03/29/2007
Group Art Unit: 1792
Examiner: Samuel A. Waldbaum
Title: DISHWASHER WITH A SYSTEM FOR RECOGNITION

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Commissioner for Patents

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APPEAL BRIEF

Pursuant to 37 CFR 1.192, Appellant hereby files an appeal brief in the above-identified application. This Appeal Brief is accompanied by the requisite fee set forth in 37 CFR 1.17(f).

Table of Contents

(1) REAL PARTY IN INTEREST	3
(2) RELATED APPEALS AND INTERFERENCES	3
(3) STATUS OF CLAIMS.....	3
(4) STATUS OF AMENDMENTS.....	3
(5) SUMMARY OF CLAIMED SUBJECT MATTER.....	3
(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL.....	6
(7) ARGUMENT	6
(8) CONCLUSION	17
CLAIMS APPENDIX	18
EVIDENCE APPENDIX	21
RELATED PROCEEDINGS APPENDIX	22

(1) REAL PARTY IN INTEREST

The real party in interest is BSH Bosch und Siemens Hausgeräte GmbH.

(2) RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) STATUS OF CLAIMS

Claims 1-10 were canceled and claims 11-20 were added by Preliminary Amendment filed June 20, 2006. Claims 11-20 are pending in the present application and have been finally rejected. The final rejections of claims 11-20 are being appealed. Claim 11 is independent.

(4) STATUS OF AMENDMENTS

An Amendment ("Amendment B") was filed on April 28, 2009, in which Claims 11 and 13 were amended and Claim 16 was canceled. The Examiner issued an Advisory Action on May 11, 2009 denying entry of Amendment B. Appellant filed a Notice of Appeal on April 28, 2009.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

The following summary is for illustrative purposes only and is not intended as a claim construction such as, for example, an opinion of counsel. The references to the drawing figures and page and line numbers of the specification are not an admission that the claims are limited to any particular embodiment or embodiments.

11. (Previously Presented) A dishwasher comprising:
at least one washing container (paragraphs 5, 13, 14, 16, 18, 19, 21, etc.) for receiving items to be handled, with the items to be handled being subjected to an operative handling cycle including at least one of a washing step (paragraphs 15, 17), a rinsing step (abstract, original claims and paragraphs 8, 18, 19, etc.) and a drying step (paragraph 24) wherein the washing step includes introduction of a cleaning agent and a fluid carrier forming a washing fluid and the rinsing step includes introduction of a rinsing fluid; and
a system (Figure 1, paragraph 21) for recognition of the fluid level of the rinsing fluid contained in the dishwasher, the fluid level recognition system having at least one capacitive filling level sensor (paragraphs 1, 2) having at least two probes, forming two capacitor plate*, each operatively coupled to a sensor surface (paragraphs 8-10, 12, 18, etc.) and projecting into the washing container for operative contact with the rinsing fluid, thereby using the rinsing fluid as a dielectric having a dielectric constant that changes with the fill level of the rinsing fluid (paragraphs 8, 9), wherein at a first fill level the probes and the rinsing fluid form a capacitor having a first capacitance value indicating a first fill level and causing the filling level sensor to sense the first fill level and at a second fill level the probes and the rinsing fluid form a capacitor having a second capacitance value indicating a second fill level and causing the filling level sensor to sense the second fill level (paragraphs 12, 13, original claims 2 and 4).

12. (Previously Presented) The dishwasher according to claim 11, wherein the filling level sensor is in the form of a capacitor whose electrical capacitance varies depending on the dielectric constant of the medium surrounding the filling level sensor (paragraph 9, original claim 2).

* "Plate" should be -plates-.

13. (Previously Presented) The dishwasher according to claim 11, wherein at least two filling level sensors are provided between which an electrical circuit preferably closes at low current as soon as the filling level sensors simultaneously come in contact with the rinsing fluid (paragraph 11, original claim 3).

14. (Previously Presented) The dishwasher according to claim 11, wherein the system for recognition of filling level comprises electronic means which preferably qualitatively and quantitatively detect the electrical capacitance or the electrical conductivity of the filling level sensor and its variation (paragraph 12, original claim 4).

15. (Previously Presented) The dishwasher according to claim 11, wherein the system for recognition of filling level comprises a number of capacitive filling level sensors which are preferably arranged at the height of specific fluid levels on the washing container (paragraph 15, original claim 5).

16. (Previously Presented) The dishwasher according to claim 11, wherein at least one filling level sensor is arranged in the base assembly in such a manner that rinsing fluid that has flowed from the washing container into the base assembly can be detected (paragraphs 17, 21, original claim 6).

17. (Previously Presented) The dishwasher according to claim 11, wherein the system for recognition of filling level comprises a filling level sensor by which means at least two different fluid levels can be determined (paragraph 14, original claim 7).

18. (Previously Presented) The dishwasher according to claim 11, wherein the filling level sensor has an extended, preferably substantially rectangular shape (paragraph 13, original claim 8).

19. (Previously Presented) The dishwasher according to claim 11, wherein the filling level sensor is located inside the washing container preferably at a position protected from spray water (paragraph 19, original claim 9).

20. (Previously Presented) The dishwasher according to claim 11, wherein a fixing side of the filling level sensor is provided with a self-adhesive layer (paragraph 19, original claim 10).

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A) The rejection of claims 11 and 12 under 35 U.S.C. §101 as being the same invention as claims 11 and 12 of copending application No. 10/583,697
- B) The rejection of claim 11 under 35 U.S.C. §112, first paragraph (written description)
- C) The rejection of claims 11-19 under 35 U.S.C. §103(a) over Wennerberg et al. (U.S. Patent No. 3,539,153) in view of Adamski et al. (U.S. Patent No. 4,982,606).
- D) The rejection of claim 20 under 35 U.S.C. §103(a) over Wennerberg et al. in view of Adamski et al., and further in view of Kuechler (U.S. Patent No. 6,294,906).

(7) ARGUMENT

Appellants' responses to each of the rejections raised in the final Office Action against the currently pending claims (1) are set forth in previously filed responses, and (2) are incorporated herein by reference in their entirety. Reconsideration and reversal of the pending rejections are respectfully requested in view of same.

- A) Claims 11 and 12 do not claim the same invention as claims 11 and 12 of U.S. Application No. 10/583,697.

Claim 11 of the present application defines a dishwasher including a system for recognition of the fluid level of the rinsing fluid contained in the dishwasher. By contrast, claim 11 of the copending application refers to a system for recognition of the fluid level of the washing fluid in the dishwasher. Therefore, an act of infringement of claim 11 of the present application would not necessarily involve an act of infringement of claim 11 of the '697 application.

Thus, Applicants respectfully submit that the same type double patenting rejection is erroneous and should be withdrawn.

- B) Claim 11 satisfies the requirements of 35 U.S.C. §112, first paragraph (written description)

In the Office Action, claim 11 was rejected as having no support in the original or amended specification for the claimed phrase "a washing step, rinsing step and a drying step, wherein the washing step includes introduction of a cleaning agent and a fluid carrier forming a washing fluid and the rinsing step includes a introduction of a rinsing fluid". See page 4 of the Office Action.

Applicants original specification provides clear support that Applicants had possession of the invention set forth in claim 11. For example, paragraph [017] makes reference to an optimal fluid level for a washing process. Furthermore, reference to washing fluid can be found at paragraphs [015] and [017]. Reference to the rinsing fluid and the rinsing step can be found throughout the specification, including the abstract, original claims, and paragraphs 8, 18, 19, etc. Moreover, per paragraph [024] once the rinsing process is complete, a pump is used to pump out rinsing fluid from the dishwasher so as to commence the drying process, e.g., by forced or unforced means.

It is noted that in relation to copending Application No. 10/583,697, the Examiner has withdrawn the rejection following deletion of “the drying step”. This amendment was proposed in the April 28, 2009 Amendment After Final Rejection (Amendment B) in the present application, but the Examiner failed to enter the Amendment. It is unclear why the Examiner did not enter Amendment B given that claim 11 was amended simply to eliminate the drying step and to include the subject matter of dependent claim 16, and claim 13 was merely placed into independent form, i.e., no new issues were presented justifying denial of the entry of the amendment.

Accordingly, the rejection under 35 U.S.C. §112, first paragraph, cannot stand, and reversal therefore is respectfully requested.

- C) Claims 11-19 are patentable over the combination of Wennerberg et al. and Adamski et al.

Independent claim 11 is directed to a dishwasher comprising at least one washing container for receiving items to be handled, with the items to be handled being subjected to an operative handling cycle including at least one of a washing step, a rinsing step and a drying step wherein the washing step includes introduction of a cleaning agent and a fluid carrier forming a washing fluid and the rinsing step includes introduction of a rinsing fluid, and a system for recognition of the fluid level of the rinsing fluid contained in the dishwasher, the fluid level recognition system having at least one capacitive filling level sensor having at least two probes, forming two capacitor plate, each operatively coupled to a sensor surface and projecting into the washing container for operative contact with the rinsing fluid, thereby using the rinsing fluid as a dielectric having a dielectric constant that changes with the fill level of the rinsing fluid, wherein at a first fill level the probes and the rinsing fluid form a capacitor having a first capacitance value indicating a first fill level and causing the filling level sensor to sense the first fill level and at a second fill level the

probes and the rinsing fluid form a capacitor having a second capacitance value indicating a second fill level and causing the filling level sensor to sense the second fill level.

The dishwasher of claim 11 provides a fill level sensor using a continuously variable capacitor as a sensor element, thereby providing continuously variable indications of fill level in a wash chamber of a dishwasher.

Wennerberg et al. discloses a water level indicator for a dishwasher that provides an indication of three distinct fill levels based on the actuation of three individual sensors. As the water level rises, output signals are sequentially produced by the low-level sensor 26, the medium level sensor 28 and the high-level sensor 30 as depicted schematically in Figure 1. See column 2, lines 61-64. Wennerberg et al. indicates that the sensor may be of any well known type, such as an electrode gap, capacitive, thermal, optical, etc. in a manner to sense the water level in the machine chamber. Column 2, lines 64-67. Accordingly, each sensor in Wennerberg et al. senses the presence of water at that sensor and the positioning of the sensor in cooperation with the positioning of the other respective sensors in the circuit provide an indication of one of the three discrete fill levels.

In sharp contrast, claim 11 is directed to at least one capacitive filling level sensor that detects continuous variations in the fill level in the water chamber of the dishwasher by using the rinsing water itself as part of the capacitor that is the sensor. The rinse water forms a dielectric while the sensor includes two probes projecting into the water chamber for contact with the rinse water. While the two probes form the capacitor plates and the rinse water acts as the dielectric, each position of the rinse water naturally means a change in water volume which means a change in the dielectric constant of the sensing capacitor. Therefore, at a first fill level, the capacitor has a first capacitance based on the first dielectric constant provided by the first rinse water cycle. At other subsequent water levels, the dielectric constant is different than the dielectric constant at the first rinse water level and therefore the capacitance of the capacitor is different at second and subsequent rinse water levels from the first capacitance at the first rinse water level, as set forth in claim 11.

Adamski et al. fails to cure the deficiencies of Wennerberg et al. with respect to claim 11. While Wennerberg et al. teaches the use of three sensors for detecting discrete levels of water in a wash container by sensing the presence of the water at each sensor, nothing in Wennerberg et al. teaches the use of continuously variable capacitance to determine a continuously variable water level. By listing the various types of sensors, Wennerberg et al. asserts their commonality for substitution as the water level sensor. The electrode gap, capacitive, thermal and optical sensors all have the common ability to detect the presence or absence of water at a particular level or position. None of these sensors, save the capacitive sensor, could possibly be used to vary capacitance to determine a continuously variable fill level. Therefore, the use of the capacitor for its ability to detect the presence or absence of water does not provide the necessary teaching that would direct one of ordinary skill in the art to use the capacitor in a manner wherein the water itself, i.e., the medium to be studied, is used as a dielectric for the capacitor or sensor itself. Therefore, there is no teaching or suggestion to combine Wennerberg et al. and Adamski et al., and therefore, Adamski et al. cannot combined with Wennerberg et al. to achieve the subject matter of claim 11. Such a combination would not result in the subject matter of claim 11, and the combination is, in any event, improper.

Accordingly, Applicants respectfully submit that the rejection of claim 11 is improper, and therefore withdrawal of the rejection is respectfully requested.

C.1) Claim 12 is patentable in view of the combination of Wennerberg et al. and Adamski et al.

Claim 12 depends from claim 11. All of the deficiencies of the rejection of claim 11 must equally apply to the rejection of claim 12. In addition, neither Wennerberg et al. nor Adamski et al. teaches or suggests that the filling sensor is in the form of a capacitor whose electrical capacity varies depending on the dielectric constant of the medium surrounding the filling level sensor. It is respectfully submitted that the final rejection fails to

provide any substantial evidence support for the rejection of claim 12 since the Examiner does not point to any prior art that discloses or suggests this subject matter. As the Examiner has not properly resolved the scope and content of the prior art, the combination of the references fails to present a *prima facie* case of obviousness. Moreover, the combination of Wennerberg et al. and Adamski et al. could not possibly result in the invention of claim 12.

C.2) Claim 13 is patentable over the combination of Wennerberg et al. and Adamski et al.

Claim 13 depends from claim 11. All of the deficiencies of the rejection of claim 11 must equally apply to the rejection of claim 13. In addition, it is respectfully submitted that the Examiner fails to provide any substantial evidence support for the rejection of claim 13 and that the Examiner does not point to any prior art that discloses or suggests that at least two filling level sensors are provided between which an electrical circuit preferably closes at low current as soon as the filling level sensors simultaneously come in contact with the rinsing fluid.

Specifically, Wennerberg et al. discloses a water level indicator for a dishwasher that provides an indication of three distinct fill levels based on the actuation of three individual sensors. As the water level rises, output signals are sequentially produced by the low-level sensor 26, the medium level sensor 28, and the high-level sensor 30. Adamski et al. discloses the use of the liquid level sensor or probe 48 in conjunction with a liquid 22 to provide a capacitance to the frequency generation circuitry 42. Adamski et al. recognizes that a capacitance between plates 50 and 52 of sensor 48 is a direct function of the dielectric constant of the material between the two plates 50, 52. In contrast with these systems, claim 13 recites that at least two filling level sensors are provided between which an electrical circuit preferably closes at low current as soon as the filling level sensors simultaneously come into contact with the rinsing fluid. Appellants respectfully submit that neither Wennerberg et al. nor Adamski et al. discloses the claimed two filling level sensors or

electrical circuitry that closes when the at least two filling levels sensors simultaneously come in contact with the rinsing fluid. As noted, Wennerberg et al. rather discloses low, medium, and high-level sensors, and Adamski et al. detects a capacitance between plates of a sensor as a function of the dielectric constant of the material between them.

Reversal of the final rejection is respectfully requested.

C.3) Claim 14 is patentable in view of the combination of Wennerberg et al. and Adamski et al.

Claim 14 depends from claim 11. All of the deficiencies of the rejection of claim 11 must equally apply to the rejection of claim 14. In addition, neither Wennerberg et al. nor Adamski et al. teaches or suggests that the system for recognition of filling level comprises electronic means which preferably qualitatively and quantitatively detect the electrical capacitance or the electrical conductivity of the filling level sensor and its variation. It is respectfully submitted that the final rejection fails to provide any substantial evidence support for the rejection of claim 14 since the Examiner does not point to any prior art that discloses or suggests this subject matter. As the Examiner has not properly resolved the scope and content of the prior art, the combination of the references fails to present a *prima facie* case of obviousness. Moreover, the combination of Wennerberg et al. and Adamski et al. could not possibly result in the invention of claim 14.

C.4) Claim 15 is patentable in view of the combination of Wennerberg et al. and Adamski et al.

Claim 15 depends from claim 11. All of the deficiencies of the rejection of claim 11 must equally apply to the rejection of claim 15. In addition, neither Wennerberg et al. nor Adamski et al. teaches or suggests that the system for recognition of filling level comprises a number of capacitive filling level sensors which are preferably arranged at the height of specific fluid levels on the washing container. It is respectfully submitted that the final

rejection fails to provide any substantial evidence support for the rejection of claim 15 since the Examiner does not point to any prior art that discloses or suggests this subject matter. As the Examiner has not properly resolved the scope and content of the prior art, the combination of the references fails to present a *prima facie* case of obviousness. Moreover, the combination of Wennerberg et al. and Adamski et al. could not possibly result in the invention of claim 15.

C.5) Claim 16 is patentable over the combination of Wennerberg et al. in view of Adamski et al.

Claim 16 depends from claim 11. All of the deficiencies of the rejection of claim 11 must equally apply to the rejection of claim 16. It is also respectfully submitted that the Examiner fails to provide any substantial evidence support for the rejection of claim 16 in that the Examiner does not point to any prior art that discloses or suggests that at least one filling level sensor is arranged in the base assembly in such a manner that rinsing fluid that has flowed from the washing container into the base assembly can be detected.

The Office Action recognizes that both Wennerberg et al. and Adamski et al. lack the claimed filling level sensor arranged in the base assembly of the dishwasher. However, the Office Action then takes the position that it would have been obvious ... to place the low sensor in Wennerberg et al. in the base "to detect the low level of the water where it is not necessarily hid by the spray arm to have protected the circuit from direct contact with the fluid ... since it has been held that rearranging parts of an invention involves only routine skill in the art," citing *In re Japikse*.

Appellants respectfully submit, however, that merely rearranging parts of an invention can be distinguished from a specifically defined part position. Applicants recognize that a simple rearrangement of parts to perform a similar function in some circumstances may not rise to the level of patentability, but the subject matter of claim 16 does not merely amount to a rearrangement of parts. Rather, as noted, claim 16 specifies at least one filling level sensor

arranged in a particular location, i.e., in a base assembly of the dishwasher, in order to detect rinsing fluid flowed from the washing container into the base assembly. Since Wennerberg et al. and Adamski et al. do not provide any such sensor in a dishwasher base assembly, Applicants submit that it is not a mere rearrangement of parts to meet the claimed subject matter, but rather is a creation of a part that is premised in impermissible hindsight in view of Applicants' own disclosure.

Reversal of the final rejection of claim 16 is respectfully requested.

- C.6) Claim 17 is patentable in view of the combination of Wennerberg et al. and Adamski et al.

Claim 17 depends from claim 11. All of the deficiencies of the rejection of claim 11 must equally apply to the rejection of claim 17. In addition, neither Wennerberg et al. nor Adamski et al. teaches or suggests that the system for recognition of filling level comprises a filling level sensor by which means at least two different fluid levels can be determined. It is respectfully submitted that the final rejection fails to provide any substantial evidence support for the rejection of claim 17 since the Examiner does not point to any prior art that discloses or suggests this subject matter. As the Examiner has not properly resolved the scope and content of the prior art, the combination of the references fails to present a *prima facie* case of obviousness. Moreover, the combination of Wennerberg et al. and Adamski et al. could not possibly result in the invention of claim 17.

- C.7) Claim 18 is patentable in view of the combination of Wennerberg et al. and Adamski et al.

Claim 18 depends from claim 11. All of the deficiencies of the rejection of claim 11 must equally apply to the rejection of claim 18. In addition, neither Wennerberg et al. nor Adamski et al. teaches or suggests that the filling level sensor has an extended, preferably substantially rectangular shape. It is respectfully submitted that the final rejection

fails to provide any substantial evidence support for the rejection of claim 18 since the Examiner does not point to any prior art that discloses or suggests this subject matter. As the Examiner has not properly resolved the scope and content of the prior art, the combination of the references fails to present a *prima facie* case of obviousness. Moreover, the combination of Wennerberg et al. and Adamski et al. could not possibly result in the invention of claim 18.

C.8) Claim 19 is patentable in view of the combination of Wennerberg et al. and Adamski et al.

Claim 19 depends from claim 11. All of the deficiencies of the rejection of claim 11 does equally apply to the rejection of claim 19. In addition, neither Wennerberg et al. nor Adamski et al. teaches or suggests that the filling level sensor is located inside the washing container preferably at a position protected from spray water. It is respectfully submitted that the final rejection fails to provide any substantial evidence support for the rejection of claim 19 since the Examiner does not point to any prior art that discloses or suggests this subject matter. While Wennerberg et al. teaches that three detectors are desirable to measure the water at three different levels, Wennerberg et al. also teaches that as the water level rises output signals are sequentially produced by the low level sensor, 26, the medium level sensor, 28 and the high level sensor 30. (Col. 2, lines 61-64). Under these conditions, to achieve a level measurement, the sensors must be actuated in sequence so that the low level precedes the medium level which precedes the high level. With a spray device, water would typically hit the sensors which are configured to detect the presence of water at rapid, random intervals such that no sequential operation could be performed to indicate that the water level was full. Therefore, there is no reason or teaching to protect the sensors from spray water. Accordingly, Wennerberg et al. cannot be used to render the present invention, as set forth in claims 16 and 19, obvious. As the Examiner has not properly resolved the scope and content of the prior art, the combination of the references fails to present a *prima*

facie case of obviousness. Moreover, the combination of Wennerberg et al. and Adamski et al. could not possibly result in the invention of claim 19.

- D) Claim 20 is patentable over the combination of Wennerberg et al., Adamski et al. and Kuechler.

Claim 20 depends from claim 11. All of the deficiencies of the rejection of claim 11 does equally apply to the rejection of claim 20. In addition, neither Wennerberg et al. nor Adamski et al. teaches or suggests that a fixing side of the filling level sensor is provided with a self-adhesive layer. It is respectfully submitted that the final rejection fails to provide any substantial evidence support for the rejection of claim 20 since the Examiner does not point to any prior art that discloses or suggests this subject matter. As the Examiner has not properly resolved the scope and content of the prior art, the combination of the references fails to present a *prima facie* case of obviousness. Moreover, the combination of Wennerberg et al. and Adamski et al. could not possibly result in the invention of claim 20. In addition, Kuechler does not make up for the deficiencies noted above with respect to Wennerberg et al. and Adamski et al.

(8) CONCLUSION

In view of the foregoing discussion, Appellant respectfully requests reversal of the Examiner's rejection.

Respectfully submitted,

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CLAIMS APPENDIX

1-10 (Canceled)

11. (Rejected) A dishwasher comprising:

at least one washing container for receiving items to be handled, with the items to be handled being subjected to an operative handling cycle including at least one of a washing step, a rinsing step and a drying step wherein the washing step includes introduction of a cleaning agent and a fluid carrier forming a washing fluid and the rinsing step includes introduction of a rinsing fluid; and

a system for recognition of the fluid level of the rinsing fluid contained in the dishwasher, the fluid level recognition system having at least one capacitive filling level sensor having at least two probes, forming two capacitor plate, each operatively coupled to a sensor surface and projecting into the washing container for operative contact with the rinsing fluid, thereby using the rinsing fluid as a dielectric having a dielectric constant that changes with the fill level of the rinsing fluid, wherein at a first fill level the probes and the rinsing fluid form a capacitor having a first capacitance value indicating a first fill level and causing the filling level sensor to sense the first fill level and at a second fill level the probes and the rinsing fluid form a capacitor having a second capacitance value indicating a second fill level and causing the filling level sensor to sense the second fill level.

12. (Rejected) The dishwasher according to claim 11, wherein the filling level sensor is in the form of a capacitor whose electrical capacitance varies depending on the dielectric constant of the medium surrounding the filling level sensor.

13. (Rejected) The dishwasher according to claim 11, wherein at least two filling level sensors are provided between which an electrical circuit preferably closes at low current as soon as the filling level sensors simultaneously come in contact with the rinsing fluid.

14. (Rejected) The dishwasher according to claim 11, wherein the system for recognition of filling level comprises electronic means which preferably qualitatively and quantitatively detect the electrical capacitance or the electrical conductivity of the filling level sensor and its variation.

15. (Rejected) The dishwasher according to claim 11, wherein the system for recognition of filling level comprises a number of capacitive filling level sensors which are preferably arranged at the height of specific fluid levels on the washing container.

16. (Rejected) The dishwasher according to claim 11, wherein at least one filling level sensor is arranged in the base assembly in such a manner that rinsing fluid that has flowed from the washing container into the base assembly can be detected.

17. (Rejected) The dishwasher according to claim 11, wherein the system for recognition of filling level comprises a filling level sensor by which means at least two different fluid levels can be determined.

18. (Rejected) The dishwasher according to claim 11, wherein the filling level sensor has an extended, preferably substantially rectangular shape.

19. (Rejected) The dishwasher according to claim 11, wherein the filling level sensor is located inside the washing container preferably at a position protected from spray water.

20. (Rejected) The dishwasher according to claim 11, wherein a fixing side of the filling level sensor is provided with a self-adhesive layer.

EVIDENCE APPENDIX

None

RELATED APPEALS APPENDIX

None